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85-1511 (1)

Supreme Court, U.S.
FILED
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CLERK

No.

IN THE SUPREME COURT
OF THE
UNITED STATES
OCTOBER TERM, 1985

In re the matter of:
John A. Betts,

Petitioner (1)

Petition for Writ of Certiorari to
The Supreme Court of Illinois

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Illinois
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(Trial court Petitioner)

QUESTIONS PRESENTED FOR REVIEW

I

Whether grounds for discipline exist for the sanctions entered by the Illinois Supreme Court against Attorney John A. Betts

II

Has Attorney John A. Betts been prejudiced by the lapse of time between the voting of the Complaint and its preparation and filing

III

Was Attorney John A. Betts judged by a negligence standard rather than by ethical standards

IV

Was Attorney John A. Betts prejudiced by the ex post facto change in the disciplinary law of the State of Illinois relating to the standards of discipline to be imposed upon members of the

i.1

bar

V

Was Attorney John A. Betts found guilty of any violation of professional ethics standards

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OPINIONS BELOW

The opinion of the Illinois Supreme Court in this matter is not reported--to the best of this writers information, knowledge and belief--as of yet. The opinion of the Illinois Supreme Court was rendered after oral argument on the issues in May 1985. In its opinion and following order, the Illinois Supreme Court affirmed in part and reversed in part the decisions and findings of the Hearing Board which found the Respondent Attorney guilty of minor violations of the Illinois Code of Professional Responsibility (not in force and effect when the Respondent had been charged) but not guilty of conduct tending to defeat the administration of justice. The opinion of the Illinois Supreme Court is attached to this Petition as Appendix C. The Hearing Board and Review Board decisions are unreported but are attached as

Appendix A and Appendix B, respectively. The order of the Illinois Supreme Court denying rehearing is attached as Appendix D

JURISDICTION

The opinion of the Illinois Supreme Court was filed on October 3, 1985. A Petition for Rehearing was filed within the statutory time by Petitioner Betts. The Illinois Supreme Court denied rehearing on December 11, 1985. This petition is timely filed within 90 days of that date pursuant to 28 USC 2101(c), as contemplated by Supreme Court Rule 20.4. The Court's jurisdiction is invoked under 28 U.S.C. section 1257(3).

STATUTE INVOLVED

The only statute involved in this case is Chapter 110A Illinois Revised Statutes Section 771 (as amended June 3, 1980) the pertinent parts which read as follows:

> Conduct of Attorneys which violates the Code of Professional Responsibility contained in article VIII of these rules or which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute

shall be grounds for discipline. also, the statute had been amended and the preamendment statute (Before June 3, 1980 and after July 1, 1978) in part reads as follows:

> Conduct of Attorneys which tends to defeat the administration of justice or to bring the legal profession into disrepute shall be grounds for discipline.

STATEMENT OF THE CASE

1. Statement of the Facts

This matter comes on a Petition for Writ of Certiorari from the Supreme Court of Illinois. The underlying subject matter concerns administration of attorney discipline in the State of Illinois.

Presently, attorney discipline is accomplished under the supervision of the Illinois Supreme Court in a three tier approach. The Illinois Supreme Court has set up an arm--the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (Com-

mission)--made up of three distinct hearing bodies. Namely, an Inquiry Panel, consisting of three Attorneys who investigate complaints against Attorneys to determine if a prima facie case for discipline exists.

In the event that a prima facie case is found to exist, a Complaint is voted and referred to a Hearing Board, also consisting of three different Attorneys, for further hearing. Investigations are made, hearings are conducted, and a report is issued. If the Hearing Board finds that discipline is warranted, an appropriate recommendation is made.

Following the Hearing Board is a Review Board, composed of nine additional attorneys. A review is made of the lower board proceedings and a report is issued.

From the Review Board, the case can

go to the Illinois Supreme Court for a final determination of contested matters or a confirmation of the proceedings below in the event that no objection is made by either party.

Basically, the Illinois Attorney Discipline system parallels the Illinois criminal justice system in that there is an Inquiry Board that functions as a Grand Jury, a Hearing Board that acts as a trier of facts, and the Review Board that operates in a manner similar to an Appellate Court. Finally, the Illinois Supreme Court acts as a court of last resort. The Illinois Supreme Court is not bound by any of the actions preceding its involvement.

Meanwhile, this case overlapped a change in the standards for discipline in Illinois. When this case was initiated, Illinois had not adopted the Code of Professional Responsibility (Code) as

a standard for the court to use as a disciplinary yardstick. The Complaint in this cause was voted on March 3, 1980. On June 3, 1980, the Illinois Supreme Court adopted the Code of Professional Responsibility and changed its rules regarding discipline to provide that Attorneys may be disciplined for violations of the Code. The discipline statute, as originally adopted and in effect when this case began provided punishment only for conduct tending to defeat the administration of justice or to bring the courts or the legal profession into disrepute, nothing to do with alleged violations of the Code of Professional Responsibility that had not been adopted by the court. The Discipline standard was changed between the time that Betts was charged and the resulting Complaint was filed.

In this case, the Respondent Attor-

ney (Betts) was a practicing attorney in LaSalle County Illinois. In late 1978 Betts was a Petitioner, represented by counsel and not pro se, in a conservatorship proceeding in Ottawa, Illinois. The Conservatorship action became the focus of considerable media attention. The local paper featured Betts, his Attorney, the presiding judge and the transaction in about forty different daily editions of the local paper.

Because of the publicity, the Commission began an investigation of the facts and circumstances of the published incident. In November 1979, Betts appeared before the Commission Members investigating this matter. Unknown to attorney Betts, on March 3, 1980, the Inquiry Panel voted a Complaint. On March 8, 1982, the Commission first notified Attorney Betts that a Complaint had been voted some two years previously. About

six months later the Commission filed a twenty-two (22) paragraph, one count Complaint against Attorney Betts. The Complaint charged several violations of the Illinois Code of Professional Responsibility, enacted after Betts had been charged, as well as "conduct which tended to defeat the administration of justice".

After a review of the evidence, the Hearing Board found Attorney Betts guilty of minor violations of the Code but not the basic charge of "conduct that tended to defeat the administration of justice". The Review Board reviewed the case and found that Attorney Betts did nothing wrong, including the supposed code violations. In a review of the case, the Illinois Supreme Court again failed to find that Attorney Betts engaged in "conduct to defeat the administration of justice", but nonetheless im-

posed disciplinary sanctions.

The Supreme Court of Illinois then denied Attorney Betts Petition for rehearing and this appeal was taken.

All of the actions in question were for matters in which Betts was not an attorney but merely a party in a case.

2. Procedural History: Basis of Federal Jurisdiction.

The history of the case is as follows:

a. October 1978-Investigatigation of incidents in LaSalle County, Illinois, by Commission.

b. March 3, 1980, a Complaint is voted by the Inquiry Panel of the Illinois Disciplinary Commission.

c. September 29, 1982, a Complaint was filed with the Hearing Board of the Commission.

d. Report of the Hearing Board was mailed to the Illinois Supreme Court on January 17, 1984, finding Attorney Betts guilty of minor violations of the Illinois Code of Professional Responsibility and recommending that Attorney Betts be suspended from the practice of law for one year.

e. November 1, 1984, the Review Board Opinion was filed with the Court rejecting the recommendation of the Hearing Board and recommending that the Complaint filed aginst Attorney Betts be dismissed and that all charges be dropped.

f. October 3, 1985, the Illinois Supreme Court filed an opinion that affirmed in part and reversed in part the findings of the Hearing Board and sentenced Attorney Betts to a six month suspension from the practice of law.

g. On December 11, 1985, the Illinois Supreme Court denied the Petition for re-hearing filed by Attorney Betts and this Petition for a Writ of Certiorari follows.

This case is a review of a State Court judgement, the Illinois Supreme Court, and the matters of federal question have been raised in the proceedings in the Illinois Supreme Court as evidenced by the opinion appended hereto as Appendix C. In addition to the matters contained in the opinion of the Illinois Supreme Court appended hereto, a basic

part of this Petition deals with the question raised in the Petition for Re-Hearing as argument point I, that being that Attorney Betts was being subjected to discipline without having been convicted of an offense for which discipline was allowed or warranted. In fact Betts was never convicted or found guilty of the basic charge. The Illinois Supreme Court failed to rule specifically on these points but upheld their finding of discipline that fails to have an underlying breach of professional conduct. All matters within this Petition are fairly comprised within all matters having been before the Illinois Supreme Court and ruled on in a manner not favorable to Betts.

REASON FOR ALLOWANCE OF WRIT

Rule 17.1(b) provides for the granting of a review on Writ of Certior-

ari in those cases when the State court has not decided a case in conformance with applicable decisions of this court. Also the ruling of the Illinois Supreme Court is most certainly repugnant to the principals of justice so rooted in the traditions and conscience of the American justice system as to be considered fundamental and therefore should be reviewed thru the allowance of the Writ requested in this Petition. The Illinois Supreme Court is attempting to deprive Betts of a property right, namely his right to practice law, in violation of his rights to equal protection and due process of law.

GROUNDS FOR DISCIPLINE DO NOT EXIST.

The Hearing Board did not find that Betts engaged in conduct that "tended to defeat the administration of justice". Upon review, Betts was found not guilty

of all charges by the Review Board. Upon further review, the Illinois Supreme Court did not (emphasis added) find Betts guilty of "conduct that tended to defeat the administration of justice".

Despite the finding that Betts did not engage in "conduct to defeat the administration of justice", and was found not guilty of all relevant charges, the court imposed discipline.

The Hearing Board found Betts violated minor provisions of the Illinois Code of Professional Responsibility but, as said above, did not find "the administration of justice" was defeated. This is an important fact due to the nature of the case and the state of the law.

Certain events are not in dispute as to the present law. The first of these is that the states have the right and the power to regulate those who appear before their Courts. Also, in cer-

tain cases, violations of the Code of Professional Responsibility can "defeat the administration of justice". On the other hand each and every alleged violation of the Code, real or imagined, does not defeat the administration of justice.

The Hearing Board found that Betts violated certain provisions of the Code of Professional Responsibility but did not find that he engaged in conduct that tended to defeat the administration of justice. In the review of the case, the Illinois Supreme Court failed to find a violation of professional ethical standards. It could be argued by some that violations of the Code could be construed as conduct that would defeat the administration of justice. This has be been examined In the Matter of Randall, 640 F. 2nd 898 (1981). In Randall the court had to decide the question of the

applicability of certain ethical considerations that had not been part of established disciplinary law. At page 905 the court stated:

> "We are not holding that every violation of an ethical consideration would be grounds for disciplinary action."

It would certainly not be the intention of the Illinois Supreme Court to discipline Attorneys based upon changes in the discipline standards made after the offense in question without some sort of showing that the offense fell within the confines of the law in existence at the time of the alleged commission of the offense in question.

An examination of the Historical and Practice notes following chapter 11 110A Illinois Revised Statutes, section 771 reveals the following quote:

> Rule 771 was added to the Disciplinary Rules effective July 11,

> 1978, to provide a list of the sanctions which can be imposed in Illinois disciplinary proceedings. As originally adopted it referred only (emphasis added) to conduct tending to defeat the administration of justice or to bring the courts or the legal profession into disrepute. But when the Illinois Code of Professional Responsibility was adopted effective July 1, 1980, rule 771 was amended effective the same date to make it clear that conduct which violated the Code constituted grounds for discipline by the court.

Authorship of the above is attributed to Albert E. Jenner, Jr., Philip W. Tone a and Arthur M. Martin, all respected members of the Illinois Bar.

It is obvious in this case that the Illinois Supreme Court is attempting to discipline Betts for alleged conduct not subject to discipline without some change in the laws in effect.

The above leaves little question that the prior intent had not been to include alleged violations of the Code of Professional Responsibility within.

The particular statute governing

The particular statute governing attorney discipline is stated in the Statute Involved section of this writing. The discipline law was changed, effective July 3, 1980. Attorney Betts was charged March 3, 1980, and the matter was left dormant for two years.

The fact is that Betts had no reason to believe that he should have to defend isolated charges of alleged code violations when the Code had not been adopted when he was charged.

Betts should not have to defend charges of alleged conduct violations that the court had no power to discipline for in the first instance. The Illinois Supreme Court made the rules and they must abide by them just as anyone else would have to in the same circumstances.

The fact that the court attempts to

invoke discipline without a violation of their own rules is repugnant to the standards presently in place in our society. Basic rules of fair play demand more.

Betts should not be held to a standard that was developed and adopted after he was charged. While the usual and customary thinking about ex post facto laws may only have limited application in disciplinary cases, there is still the question of basic fair play and due process. See Phipps vs. Wilson (1951) 186 F. 2d 748.

The Illinois Supreme Court neither found that Betts violated Code provisions, enacted after he was charged, nor did he engage in "conduct that tended to defeat the administration of justice". In fact the Illinois Court specifically stated that Betts did not commit a fraud

on the court when they said: "...we are of the opinion that the respondent's actions fell short of perpetrating a fraud on the court."

Attorney Betts was never found guilty of any thing that would subject him to discipline. Therefore no sanction should be allowed. This case may be appropriate for summary reversal.

II

ATTORNEY BETTS HAS BEEN PREJUDICED BY A LAPSE OF TIME

The incidents that initiated the involvement of the disciplinary officials took place in late 1978. A Complaint was voted March 3, 1980, but the Respondent was not notified for more than two years. This fact is not in dispute. Because the Respondent was not notified of the pending matter, he could not prepare his case.

It is generally conceded that

lapse of time is not a bar to an action unless it can be shown prejudice results from the lapse. Certainly this is the case beofre us, as evidenced by the Complaints of the Hearing Board, Betts could not produce documents for their inspection. How was Betts to know that he must have documents for use many years later when he had no knowledge that matters were pending?

If Betts had known that matters were pending, he could have collected documents to prepare his defense. Because Betts had no knowledge of the pending action, he did not have an adequate opportunity to prepare a defense and to respond to questions. The right to prepare a defense encompasses more than the mere right to appear in court. The disciplinary authorities had an obligation to keep Betts fully informed of

of his involvement of an ongoing investigation, the only explanation for not doing so was a lack of proper staffing. This differs from a situation where disciplinary officials discover an incident in the past that had not come to anyone's attention as opposed to an ongoing matter. In fact, the impression given, is that the disciplinary officials made an effort to keep the investigation from the Respondent rather than making all details known to him. For more than three and one half years Betts had no knowledge that the matter was anything more than an inquiry. None of the delay was caused by acts or conduct of the Respondent.

The Respondent was not given ample opportunity to be adequately heard and to prepare an adequate defense.

III

ATTORNEY BETTS WAS JUDGED BY A NEGLIGENCE STANDARD RATHER THAN BY ETHICAL STANDARDS.

The Respondent was not found guilty by the Illinois Supreme Court or any of the various hearing bodies, of conduct that tended to defeat the administration of justice. An examination of the courts decision reveals that Betts was never guilty of anything more than carelessness in drafting documents, not some unnamed violation of professional conduct. The Supreme Court sets the standards for discipline so the standards must be uniform for all. The court must not be able to set different standards for this Attorney than they would for others in the same situation.

The court said that Attorney Betts neither defrauded the court nor did he participate in the creation of false evidence, and more importantly the court

never found Betts to have engaged in conduct tending to defeat the administration of justice. By the standards set up and inplemented by the Court (Illinois Supreme Court), Betts was not guilty.

Betts should never be held to be subject to discipline because he may have been a poor preparer of documents. This case may be appropriate for a summary reversal.

IV

ATTORNEY BETTS WAS PREJUDICED BY AN EX POST FACTO LAW

Subsequent to the time that an investigation was begun of Betts, the laws concerning attorney discipline in Illinois were changed. The governing law is chapter 110A Illinois Revised Statutes, section 771. Basically the law was changed in July 1980 to provide discipline for violations of the Illinois

Code of Professional Responsibility. This is slightly more than two months after Betts was charged. Previous to that time, punishment was had for conduct tending to defeat the administration of justice or to bring the legal profession into disrepute.

The Hearing Board found that Betts had allegedly violated certain provisions of this Code and recommended punishment. Betts contends that to be subjected to changes in the types of discipline after he had been charged is a violation of Article I, Section 10, Clause 1 of the United States Constitution prohibiting States from the passage of ex post facto laws.

Clearly the sanction for disciplinary matters is a punishment within the constitutional frame work. The loss of the right to practice one's chosen pro-

fession is punishment every bit as much as the loss of social security benefits. See Fleming vs. Nestor (1960) 363 U.S. 603, 4L. ed 2d 1435, 80 S. Ct. 1367.

Certainly, the loss of the right to practice law is the loss of a valuable property right in that it is recognized that the loss of income can be enormous during the time that an attorney can not practice.

Continually, reference is made to the fact that Betts has never been convicted of anything that would warrant discipline of any sort. The only thing that resembles an unfavorable finding was the passing reference to findings relating to matters put into existence after the time that Betts had been charged.

V

BETTS WAS NOT GUILTY OF VIOLATION OF PROFESSIONAL ETHICS STANDARDS

The Illinois Supreme Court merely

found that Betts did not draft documents properly rather than having violated any sort of ethical standard. The Illinois court specifically found that Betts did not commit a fraud on the court, that the Petition he filed thru his Attorney probably was warranted and the result of the final action merited. The Illinois Court failed to find that Betts had any dishonest motives or that his motives were in anyway improper.

Clearly the test in disciplinary matters is a showing that the attorney engaged in conduct that was fraudulent, intentional and the result of improper motives. In re Richard R. Ryder (1967) 263 F. Supp 360 at 361 and In re Fisher (1950) 179 F. 2d 361 at 369. The Illinois Appellate Court examined the subject matter in the underlying circuit court case and found that Betts did not have any culpability for the statements

that the Illinois Supreme Court now found relevant in some way. In re the Estate of Knutson (1980) 83 Ill. App. 3d 907, 912. In fact, the Appellate Court in Knutson said that they would not even assess attorney fees and costs if Betts had been innocent of all the charges other than some unrelated items dealing with questions of relatives and real estate. The Supreme Court said that Betts was not guilty of all the other charges but yet they would impose sanctions. What the Supreme Court said was:

> "...We do not think that the respondent's conduct comported with with accepted professional standards."

Simply put, the sentence means that Bet Betts made a mistake and nothing more. The court never found that Betts had bad motives, engaged in fraudulent conduct (and in fact specifically stated that he did not (emphasis added) commit a fraud

upon the court) nor that he ha d an improper motive. In fact the court said that there appeared to be a basis for Betts' actions.

The Supreme Court had no basis in fact or law for the suspension of Betts but merely entered the suspension order based upon some supposed negligence standard coupled with speculation on the part of the court.

Betts is being punished for less than artful draftsmanship of pleadings rather than for any bad intent or improper actions.

Also, the court is attempting to punish Betts for conduct that was performed by his attorney. This writer does not intend to convey the impression that anyone did anything other than what they should have done in this case but the inescapable fact is that all the

matters that have been complained of or mentioned in any regard were performed by Betts' Attorney in the lower court proceeding. Yet, Betts has been the focus of this case from the beginning, not his attorney.

Justice requiers that the decision of the Illinois Supreme Court be reversed.

CONCLUSION

For the reasons stated in this writ, the petition should be granted.

Respectfully submitted,

Peter F. Ferracuti

Counsel for Petitioner

APPENDIX A

DO NOT PUBLISH

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of: John A. Betts, Attorney-Respondent.	)))	No. 82 SH 69

REPORT OF HEARING PANEL

Panel 12 of the Hearing Board, consisting of James E. Gorman, Chairman, John T. Bullington, and William F. Costigan, hereby reports the following:

FINDINGS OF FACT

1. On or about March 29, 1978 the Respondent, along with the Webers, his clients and partners, purchased Emil Knutson's interest in a certain 20-acre tract of real estate in LaSalle County, Illinois. Knutson had an approximate 51% fractional ownership interest in said acreage, and had resided thereon

for many years.

2. As part of the agreement, and as stated in the Quit Claim Deed, Knutson was to have the right to use and remain on a certain portion of the 20 acres "for his lifetime or until he abandoned the premises." The portion to remain in Knutson's use is described in detail in the Record, but in general was a piece of ground on the ~~eastern~~ edge of the 20-acre tract, with a 150' frontage, and it was upon this site that Knutson had resided in a dilapidated frame building, and subsequently, a house trailer.

3. That Emil Knutson was an elderly person, of questionable mental competency, and apparently living in extremely sub-standard conditions; for example, without proper nourishment, and without plumbing and with minimal heating facilities. His income consis-

ted of benefits from a pension and Social Security, approximating $600 a month.

4. That there had been complaints regarding the conditions, and more particularly, the activities that had occurred at Knutson's homesite prior to March, 1978, and that these complaints and activities increased markedly following March, 1978 and up to October of 1978.

These activities involved, among other things, noise, drinking, fighting, and firearms. Knutson's home apparently became a center for certain undesirable younger people, and their activities thereon resulted in numerous complaints from the neighbors.

5. That during this period of time it was apparent that these persons took advantage of Knutson, and that by October of 1978 he had spent the

$10,000 which he had received in March from the Respondent and his partners. Although there was no direct evidence of the particular expenditures, with the exception of the purchase of a used car, it would be fair to assume that Knutson spent his money on the "group entertainment."

6. That on March 28, 1978 a land trust was created, and the Respondent became the beneficial owner of the interest in the land that had been Knutson's. Reference was made to a "collateral agreement" which was said to have set forth the interests of the Respondent and of the Webers as regards the tract in question, but said agreement was not offered in evidence; and that these persons, the Webers and Respondent, then initiated the development of a subdivision on the 20-acre tract, and that the final plat was ac-

cepted in September of 1978.

7. That the activities on Knutson's homesite and the complaints regarding them culminated in a meeting between the State's Attorney, the Respondent and his partners, and the neighbors. At that time it was discussed and determined that a conservatorship for Knutson might be considered as a solution to the problem.

8. Subsequently, the Respondent took an active and leading role in the appointment of a conservator for Emil Knutson as follows:

a. He and his partners agreed to finance the expense of the conservatorship;

b. He requested Attorney John Hardin to act as Conservator, and declined to follow the suggestion that the local Legal Aid office might become in-

volved in the role of Conservator.

c. He accompanied Attorney Hardin to the Emil Knutson home.

d. He caused a Dr. Terrance Love to accompany him to the Knutson home for the purpose of an examination, cautioning Dr. Love not to disclose his occupation or profession, and suggesting to the doctor that he leave his medical bag in the car.

e. He prepared an Affidavit to be signed by Dr. Love.

f. He, the Respondent, signed and filed a Verified Petition for the Conservatorship of Emil Knutson.

9. The verified petition alleged that Emil Knutson was incompetent, and further, that:

a. "that to the best of Petitioner's (Respondent's) knowledge, there are no living relatives of the Incompetent in the State of Illinois."

b. "To the best of Petitioner's knowledge, the Incompetent owns no real estate in LaSalle County or Illinois."

c. The "Physician's Affidavit" (prepared by Respondent and signed by Dr. Love, and attached to the Petition) included a statement that "on October 2, 1978 I examined Emil J. Knutson." (underlining ours.)

10. That the statements in the Petition were misleading and untrue in the following respects.

The Respondent had been told there were relatives in Illinois, and his tes-

timony as to his attempts to locate them were not sufficient basis to state there were no relatives in Illinois. At most, it would be a basis for stating that he could not locate any relatives in Illinois.

The statement regarding "no real estate in Illinois" was untrue if, in fact, a life estate is considered to be an interest in real estate--and if not real estate, then this statement was misleading in that the Respondent had knowledge of Knutson's right to remain on the property in question, and this right should have been recited.

As to the Physician's Affidavit, it was clear that Dr. Love had not performed an examination that would, in any way, qualify as a physician's or physical examination.

11. That on October 11, 1978 a hearing was held in the Circuit Court

of LaSalle County, and Knutson was declared incompetent, and Attorney John Hardin was appointed Conservator.

12. That on October 11, 1978 a Writ of Assistance was granted, and Knutson was removed from the property on that date.

13. On October 12, 1978 Knutson's homesite was cleared and cleaned up by a partner of the Respondent, and the dilapidated frame home was burned.

14. On October 12, 1978 the Webers paid to the Respondent the sum o of Ten Thousand Dollars ($10,000.00) said sum being in consideration of his fees regarding the project and his interest in the property.

15. That the Respondent and his partner, Lyle Weber, testified that a written "collateral agreement" had been signed by the Respondent and by the Webers, and that that writing set forth

the terms of their agreement regarding this property, and that this writing was in existence and available--but this document was not entered into evidence by or on behalf of the Respondent, and thus the terms of that agreement were never made known to the Hearing Board.

16. On October 16, 1978 a Petition to Remove the Conservator was filed, and on December 1, 1978, following a hearing, the court vacated the Order of Incompetency, finding that the allegations and conclusions of the Petition were misleading and not substantiated by fact. The trial court ruling on Knutson's subsequent Petition for Attorney's Fees and Expenses found in part "that the allegations in the Petition for Conservatorship relating to the... knowledge of the living relatives, and.. the interest in real estate, and in the

general incompetency of the alleged incompetent were untrue and were made without reasonable cause." This decision was affirmed by the Appellate Court, and the Respondent's Petition for Leave to Appeal to the Supreme Court was denied.

CONCLUSION OF FACT AND LAW

The Respondent was charged with a violation of the following Canons of Ethics.

Canon 1, Rule 1-102 - Misconduct

> A. A lawyer shall not (4) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Canon 7, Rule 7-102(4)

> In his representation of a client, a lawyer shall not knowingly use perjured testimony or false evidence.

Rule 7-102(5)

> In his representation of a client, a lawyer shall not (5) knowingly make a false statement of law or fact.

> Rule 7-102(6)
> In his representation of a client, a lawyer shall not (6) participate in the creation or preservation of evidence when he knows or when it is obvious that the evidence is false.
>
> Rule 7-104(a) (2)
> During the course of his representation of a client, a lawyer shall not (2) give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client.

The Panel hereby finds and concludes:

1. That the Respondent violated Canon 7 - Rule 7-102(5) and (6) by knowingly making the statements as mentioned in the above findings in the Verified Petition that he prepared, signed, and filed, and in creating evidence which he knew was based on untrue facts.

2. That the Respondent violated

Rule 1-102 in that he engaged in conduct involving dishonesty, deceit, and misrepresentation, when he actively pursued the determination of incompetency of Emil J. Knutson and when he persistently suggested that Knutson was incompetent and should be removed from the property. The Respondent had a direct financial interest in the property in question adverse to that of Emil Knutson. Respondent improperly took part in the Conservatorship proceedings which culminated in a declaration of incompetency and in the subsequent removal of Knutson from the property.

RECOMMENDATION

The Panel hereby recommends that the Respondent, John A. Betts, be suspended from the practice of law for a period of one year.

/S/ James E. Gorman
James E. Gorman, Chairman

/S/ John T. Bullington
John T. Bullington

/S/ William F. Costigan
William F. Costigan

APPENDIX B

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:)
JOHN A. BETTS,) No. 82-SH-69
Attorney-Respondent.)

REPORT AND RECOMMENDATION
OF THE REVIEW BOARD

The Hearing Board recommends that the Respondent John A. Betts be suspended from the practice of Law for a period of one year.

This matter comes to the Review Board upon the exceptions filed by the Administrator to this recommendation, and asks that we amend the Board's recommendation by increasing the discipline to that of disbarment.

The Respondent has also filed his exceptions to the Hearing Board's recommendations. He asks that we dismiss

the complaint.

The Review Board, having given full consideration to all matters of record, and having heard oral arguments in support of the parties' respective positions, respectfully rejects the recommendation of the Hearing Board, and in turn recommends that the Complaint be dismissed, with all the charges dropped.

RELEVANT AUTHORITIES

We reach this conclusion governed by the prescription found in Supreme Court Rule 753(e)(3), together with case authority in support thereof.

1. Supreme Court Rule 753(e) (3)

> The Review Board may approve the findings of the Hearing Board, may reject or modify such findings as it determines are not established by clear and convincing evidence may make such additional findings as are established by clear and convincing evidence, may approve, reject, or modify the recommendations..."
>
> See also: "In Re: Andros, 1976, 64 Ill 2d, 407, 419; "In Re: Bossov, "1975, 60 Ill 2d,

439, 441.

2. In the disbarment proceedings of "In Re: Moore," 8 Ill 2d, 373, 378, our Supreme Court held that:

> "However, the power to discipline is not arbitrary, and must be exercised with legal discretion and caution. Proof of the charges must be established by clear and convincing evidence, and the record must be free from doubt not only as to the act charged, but as to the motive with which it was done."
>
> See also: "In Re: Donaghy," 1949, 402 Ill, 120, 135.

3. Finally, the Illinois Appellate Court, 1st District (5th Division), in the matter of "In RE: Ragen," 79 Ill. App. 3rd, 8, defines clear and convincing evidence at page 13:

> "Proof by preponderance of the evidence is not the same as proof by clear and convincing e evidence. The preponderance of the evidence has been defined as evidence sufficient to incline an impartial and reasonable mind to one side of an issue rather than the other. (Citations) A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not. (Citations) Clear and convincing evidence, on the other hand, reflects a more exacting standard of proof." (Emphasis supplied.)

> "While it has been defined as evidence which leaves the mind well satisfied of the truth of a proposition (Citations), or leads to but one conclusion (Citations) proof by clear and convincing evidence has most often been defined as the quantum of proof which leaves no reasonable doubt in the mind of the trier of fact as to the truth of the proposition in question (Citations). It is apparent, however, that although stated in terms of reasonable doubt, clear and convincing evidence is considered to be more than a preponderance while not quite approaching the degree of proof necessary to convince a person of a criminal offense. (Citations) The spectrum of increasing degrees of proof from preponderance of the evidence, to clear and convincing evidence, to beyond a reasonable doubt, is widely recognized, and it has been suggested that the standard of proof required would be clearer if the degrees of proof were defined, respectively, as probably true, highly probably true, and almost certainly true. (Citations)"

In sum, we are of the opinion that the Administrator has failed to prove his charges against the Respondent by clear and convincing evidence.

FACTUAL SUMMARY

The relevant facts gleaned from the records can be summarized as follows:

On or about March 29, 1978, the Respondent, on behalf of his clients and partners, purchased Emil Knutson's interest in a certain 20-acre tract of real estate located in LaSalle county, Illinois. As part of the agreement, Emil Knutson reserved unto himself an interest in the real estate defined as "the right to use and remain on a certain portion thereof for his lifetime or until he abandoned the premises." (Emphasis supplied.)

The Hearing Board in fact found that Emil Knutson was an elderly person of questionable mental competence, who apparently lived in extremely sub-standard conditions; for example, without proper nourishment, plumbing, or minimum heating facilities.

The Hearing Board further found that there had been many complaints made regarding the activities that occurred on Knutson's homesite prior to March, 1978, and that these complaints and activities increased markedly following March, 1978, and up to October, 1978. These activities involved, among other things, noise, drinking, fighting, and firearms. Knutson's home apparently became a center for certain undesirable younger people, and their activities thereon resulted in numerous complaints from the neighbors.

The facts further reflect that during this period of time it was apparent that these persons took advantage of Knutson, and that by October, 1978, he had spent the $10,000 which he had received in March from the Respondent and his partners for the purchase of his property. Although there was no direct

evidence of the particular expenditures, with the exception of the purchase of a used car, it would be fair to assume that Knutson spent his money on "group" entertainment.

The activities at Knutson's home-site and the complaints regarding them culminated in a meeting between the State's Attorney, the Respondent and his partners, and the neighbors. At that time it was discussed and recommended that a Conservatorship for Knutson be considered as a solution to the problem.

Thereafter the Respondent signed and filed a verified Petition for the Conservatorship of Emil Knutson. In support thereof, the Respondent caused one Dr. Terrance Love to accompany him to the Knutson home for the purposes of making an examination of Mr. Knutson. The Physician's Affidavit, prepared by the Respondent and signed by Dr. Love,

sets forth the doctor's findings based upon his oral and visual examination of Mr. Knutson.

SPECIFIC CHARGES

The gravamen of the Administrator's complaint is to be found in the Respondent's verified Petition filed in support of the appointment of a Conservator for Knutson, wherein Respondent states:

a. That "to the best of the Petitioner's (Respondent's) knowledge, there are no living relatives of the incompetent;" (parenthesis added)

b. "To the best of the Petitioner's knowledge, the incompetent owns no real estate in La Salle County, Illinois."

c. The "Physician's Affidavit" (prepared by Respondent and signed by Dr. Love and attached to the Petition) included a statement that:"On October 2, 1978, I examined Emil J. Knutson." (parenthesis added)

The Administrator specifically charges in his complaint that Respondent's verified statements as set forth above violated the following specific

cannons of ethics and related rules, in that they involved:

a. deceitfulness;
b. misrepresentations;
c. dishonesty;
d. knowingly using false evidence;
e. knowingly making a false statement;
f. the creation or prevention of evidence which he knew to be or which was obviously false;
g. giving advice to a person not represented by an attorney when the interest of the person is in conflict with the interest of his client.

ANALYSIS

A. That "to the best of the Petitioner's (Respondent's) knowledge, there are no living relatives of the incompetent."

The Hearing Board concluded that Respondent's statements contained in his verified Petition were both misleading and untrue. In reaching this conclusion, the Hearing Board held that:

> "The Respondent had been told that there were relatives in Illinois, and his testimony as to his attempts to locate them were not sufficient basis to state there were no relatives in Illinois. At most, it would be a basis for stating that he could not locate any rela-

tives in Illinois."

Our examination of the record fails to disclose any clear and convincing evidence to support the allegation in the complaint that the Respondent made misleading or untrue statements regarding the existence of any of Mr. Knutson's relatives in Illinois. We do note that Respondent's effort to determine whether relatives in face were located in Illinois met with frustration at the hands of Knutson and his California-based niece. We also take note that of the two relatives proven to have been in Illinois, one was in jail and the other was in a mental institution.

We agree that the Respondent could have been more artful in drafting his Petition and should have been more precise by stating that he "could not locate any relatives in Illinois," but we agree with Respondent that at its worse

the matter is really one of semantics and not evidence of any intent to deceive.

B. "To the best of the Petitioner's knowledge the incompetent owns no real estate in LaSalle County, Illinois."

The Hearing Board is of the view that Respondent in making this statement uttered an untruth and misrepresented the facts, all in violation of existing canons.

The Hearing Board in so holding stated that:

> "...if in fact a life estate is considered to be an interest in real estate - and if not real estate, then this statement was misleading in that the Respondent had knowledge of Knutson's right to remain on the property in question, and this right should have been recited."

We disagree.

It is clear that in the sale of the Fee to the parcel to Respondent and his client, an interest in the land in the form of a Life Estate in a certain lot

within the parcel sold, was reserved to Mr. Knutson.

We are of the opinion, however, that Respondent's failure to accurately state Mr. Knutson's limited interest in the realty is not sufficient to sustain the burden of proof required in such instances to establish the charge of dishonesty, or of misrepresentations of a material fact.

It is our view that although a Life Estate technically could be construed as an ownership in land, a reasonable man could just as readily and reasonably conclude that a "Life Estate" is a mere interest in realty, while the term "Owns no real estate" contemplates a fee interest.

It could well be that Respondent should have been more precise and have disclosed Mr. Knutson's Life Estate. The absence thereof is not deception and

it did not mislead the trial judge in a material matter.

c. The "Physician's Affidavit" included a statement that: "On October 2, 1978, I examined Emil J. Knutson."

The Hearing Board next finds that the "physician's Affidavit" was misleading and untrue, as the evidence indicated that Dr. Love had not performed an examination that would in any way qualify as a physician's physical examination.

The record is clear that Dr. Love did in fact conduct an oral and visual examination of Mr. Knutson, which was reasonably supportive of the conclusions made in his Affidavit. The record reveals a reasonable relationship between Dr. Love's oral findings and the statements in the Affidavit. We again note the Hearing Board's own finding to the effect that:

> "Emil Knutson was an elderly person, of questionable mental compe-

> tency, and apparently living in extremely sub-standard conditions; for example, without proper nourishment, and without plumbing and with minimal heating facilities..."

Further the Health Board of Manlius Township, LaSalle County, Illinois, on October 6, 1978, took testimony from Mr. Knutson, Mr. Hardin (the Conservator), and John Betts, and specifically held that it is:

> "The feeling of the Board at this time, that due to the defendant's apparent present health condition and the physical condition of his living quarters that the man is incapable of improving either one of these conditions, and that he has neither the will nor financial capability to make these changes. His apparent physical condition seems to indicate that he needs supervision in his daily living habits."

The issue to be resolved is not one of choosing between conflicting testimony on a medical question, rather the issue is whether the statements recited in the Affidavit were Dr. Love's findings based upon his oral and visual ex-

amination of Mr. Knutson. The Administrator was free to challenge Dr. Love's credibility and the weight to be given to Dr. Love's testimony, but was bound to prove by clear and convincing evidence that the Physician's Affidavit was not true or misleading. We hold that there is no clear and convincing evidence in the record to find that the Affidavit was either misleading or untrue.

D. Decision of the Circuit Court of La Salle County

The Hearing Board next calls our attention to the December 1, 1978, decision of the Circuit Court of LaSalle County. This matter arose out of proceedings filed by the alleged incompetent to remove his previously appointed Conservator and for attorneys fees. The Circuit Court not only vacated the original Order of Incompetency, but went on to hold that the allegations and conclusions recited in Respondent's original

verified Petition, alluded to above, were both misleading and unsubstantiated by fact. The Circuit Court thereafter set aside the finding of Incompetency on the part of Mr. Knutson, and vacated the Order allowing a Conservator over his person. The Circuit Court thereafter granted Mr. Knutson's Petition for Costs and awarded attorneys fees. The Court in granting Mr. Knutson's Petition found, in part, from the existing evidence:

> "That the allegations in the Petition to Conservatorship relating to ...knowledge of the living relatives, and...the interest in real estate, and in the general incompetency of the alleged incompetent were untrue and were made without reasonable cause."

The Circuit Court's decision and factual findings were affirmed on appeal.

The Hearing Board has placed a great deal of credence upon the Circuit Court's finding, as affirmed. We have

reviewed the evidence submitted in support of this finding as indicated above, and find that although the preponderance of the evidence may well support the fact findings by the Circuit Court, the record fails to indicate any new evidence regarding Respondent's alleged misconduct. We accordingly hold that the evidence in the record fails to be clear and convincing, and therefore is insufficient to support the recommendations of the Hearing Board.

Respondent's position is bolstered by the fact that the original decision of the Honorable Judge James L. Waring, who in finding Mr. Knutson an incompetent, did so not only relying upon Respondent's verified Petition; and Dr. Love's Affidavit, but also on the findings of the Health Board of Manlius Township, LaSalle County, as cited above. Respondent can find further com-

fort regarding Mr. Knutson's circumstances in the finding of fact of the Hearing Panel at paragraph 3 of Page 1 thereof.

E. Conflict of Interest

Lastly the Respondent is charged with a conflict of interest in that in addition to having filed an allegedly false petition, he had a financial interest in the outcome of that proceeding. The Administrator in his brief at Page 10 states:

> "...when Respondent filed a false petition to declare a person with an adverse interest an incompetent, then he engaged in fraud and therefore violated Rule 1-102. Clearly his motive to defraud was to remove Knutson from land where he was intending to build a subdivision."

We recognize that there is some basis to find that Respondent had a motive in filing his petition. We have agonized over the record and find that there is sufficient doubt that the evidence supports the conclusion that there

exists a relevant conflict of interest between the Respondent and Mr. Knutson. We accordingly conclude that the evidence in support of the charge of Conflict of Interest is not clear and convincing.

CONCLUSION AND RECOMMENDATION

We reject the Hearing Panel's "Conclusion of Fact and Law," and dismiss the Complaint.

Respectfully submitted,

Chester L. Blair, Chairman
Marshall A. Susler
Michel A. Coccia
Herbert J. Bell
C. William Fechtig
Richard L. Kahn
John Cadwalader Menk

APPENDIX C

BEFORE THE SUPREME COURT
OF THE
STATE OF ILLINOIS

In the Matter of:)
John A. Betts,) No. 61411
Attorney-Respondent.)

JUSTICE MORAN delivered the opinion of the court:

The Administrator of the Attorney Registration and Disciplinary Commission filed a complaint charging respondent, John A. Betts, with professional misconduct. The charges stem from respondent's participation in a conservatorship proceeding. The complaint alleged that respondent knowingly made false statements in the filing of a petition for conservatorship; that he knowingly created false evidence; and that he engaged in conduct involving dishonesty, deceit and misrepresentation. The Hearing

Board found respondent guilty of the above charges and recommended that he be suspended from the practice of law for a period of one year. Both the Administrator and respondent filed exceptions with the Review Board. The Review Board concluded that the Administrator had not proved the charges by clear and convincing evidence and recommended that the complaint be dismissed. (94 Ill. 2d R. 753(e)(3). We granted the Administrator's petition for leave to file exceptions to the report and recommendation of the Review Board. 94 Ill. 2d R. 753 (e)(6).

At issue is whether the charges of misconduct were proved by clear and convincing evidence. Additionally, respondent contends that he was denied a fair hearing, in part, because the Hearing Board conducted hearings over a seven-week period instead of on a continu-

ous basis in violation of Rule 9.1 of the Rules of the Attorney Registration and Disciplinary Commission. (Ill. Rev. Stat. 1981, ch. 110A, following par. 771.) He also maintains that members of the Hearing Board represented clients with adverse interests to those of respondent in civil matters related to the charges in this proceeding, and that the hearing panel erroneously precluded respondent from introducing certain evidence.

The relevant facts are as follows. Respondent was admitted to the Illinois bar in October 1975. Soon thereafter he began representing Lyle and Robert Weber in various business and real estate transactions. The Webers owned a realty company. In March 1978, respondent, on behalf of the Webers and himself, approached Emil Knutson and inquired whether Knutson's property was for sale.

The Webers and respondent were interested in developing a residential subdivision on Knutson's property, a 20-acre tract in LaSalle County. According to Lyle Weber, respondent was to provide all the legal services involved in purchasing and subdividing the parcel in return for a one-third interest in the subdivision project.

Knutson, who was then 79 years old, had lived on the property for most of his life. His only source of income consisted of benefits from a pension and social security amounting to approximately $600 a month. According to respondent, the only structure on the property was an "old ramshackle beaten-down building." After viewing the property, respondent inquired whether the property was for sale. Knutson offered to sell the property for $500 an acre, or $10,000.

Respondent thereafter discussed the possible purchase with the Webers. They agreed with respondent that Knutson's asking price of $10,000 was acceptable and directed respondent to prepare a title report on the property. The title search revealed that Knutson owned approximately a 51% interest in the property. The other owners were relatives of Knutson. According to respondent, Knutson denied knowing the whereabouts of any of his relatives. However, Knutson testified that he told respondent that he had a niece who lived in California, and another who lived in Chicago.

Upon discovering Knutson's fractional interest, respondent stated that he attempted to locate the other owners. By examining records in the township assessor's office, respondent found the name and address of Carol Mitchell, a

niece of Knutson who lived in California. Mitchell did not have an interest in the property at that time. She testified, however, that Knutson had promised to devise the property to her in his will. Respondent called Mitchell on March 19, 1978, regarding the whereabouts of any relatives who might have had an ownership interest in the property. Mitchell told respondent that he could not purchase the property because Knutson was not the sole owner. She refused to give him the addresses of any relatives. Respondent testified, however, that he learned from their conversation that only two other relatives--Mary and Edward Knutson--had a substantial interest in the property. Respondent also learned from Mitchell that these two relatives lived near Dixon, Illinois. In an effort to locate Edward and Mary Knutson, respondent called direc-

tory assistance and the Dixon, Illinois, police department. Both attempts were unsuccessful. Thereafter, on March 26, 1978, respondent again called Mitchell and requested that she furnish him with the addresses of relatives having an interest in the property. Mitchell refused.

On March 29, 1978, respondent, along with the Webers, purchased Knutson's interest for the agreed price. As part of the agreement, the Webers also paid $1,000 in real estate taxes due on the property. In addition, the quit-claim deed from Knutson to Lyle Weber reserved to Knutson the "(r)ight***to retain use of the East 150 feet of the Real Estate***for his lifetime or until his abandonment of the premises whichever comes first." Subsequently Weber conveyed title to the parcel by warranty deed to the First National Bank of Otta-

wa in trust. Respondent was named the sole beneficiary. A title insurance policy was issued in the name of the trustee, and "John Betts owner of property(.) Development contract among Lyle P. Weber, Robert F. Weber & John Betts."

Prior to the purchase, police had investigated several disturbances on the Knutson property. The evidence introduced at respondent's hearing showed that the number of disturbances on the property increased significantly after the March 1978 conveyance. The evidence also showed that Knutson's living conditions were substandard.

Tom Templeton, a LaSalle County deputy sheriff, testified that he visited Knutson's residence in the fall of 1978. Upon entering Knutson's trailer he found several persons, including Knutson, unconscious on the floor. According to Templeton, all of the persons

in the trailer had been drinking. He observed garbage strewn about the trailer, and human excrement on the floor. The trailer smelled of sewage. He testified that a hole cut in the corner of the trailer was being used as a toilet.

David Keller, chief of police of the Seneca police department, testified that he had responded to several disturbance calls on the property. On each occasion he said that Knutson appeared to have been intoxicated. Several other law-enforcement officials testified about the conditions and disturbances on the Knutson property. They testified that the property had become a center for certain undesirable young people. They also testified that they ahd received complaints from neighbors about noise, dringing, fighting, and the use of firearms on the property.

The numerous complaints about the

disturbances and conditions on the property culminated in a meeting attended by the LaSalle County State's Attorney, respondent, the Webers, and several of Knutson's neighbors. The State's Attorney testified at respondent's hearing that he suggested that a conservatorship for Knutson be considered as a solution to the problem. He also suggested that respondent employ John W. Hardin III, a local attorney, to institute the conservatorship proceeding.

Respondent contacted Hardin on September 22, 1978, and inquired whether Hardin would be interested in serving as conservator. After meeting with Knutson and observing his living conditions, Hardin agreed to represent respondent in the conservatorship proceeding. Thereafter, Hardin requested a hearing and assistance for Knutson from the Manlius Township Health Board.

On October 2, 1978, respondent asked Dr. Terrance W. Love, a physician, to accompany him to the Knutson property for the purpose of making an examination. Dr. Love testified that his examination consisted solely of history taking, interrogation, and close observation of Knutson and Knutson's living conditions. He left his medical in instruments in the car at the request of respondent, who stated that he believed Knutson would become belligerent if the purpose of the visit was made known to him. Once inside Knutson's trailer, Dr. Love discovered that it was filled with garbage and infested with rodents. Both the trailer and Knutson's clothing smelled of urine. Dr. Love also observed that the trailer lacked plumbing, electricity, water or a telephone. A woodburning stove in the trailer did not function. There was no food in the

trailer.

Dr. Love also testified that Knutson appeared to suffer from several physical ailments, including a severe eye irritation, a fungal infection in the fingernails, enlarged joints in the fingers, and clubbing, which indicated a lung problem. Dr. Love observed that Knutson suffered unintentional tremors in his hands, a symptom he attributed to parkinsonism or alcoholism. Respondent subsequently prepared an affidavit signed by Dr. Love which stated that it was Dr. Love's opinion that Knutson was "physically and mentally incapable of managing his personal estate and his person within the meaning prescribed" by Illinois law.

The Manlius Township Health Board conducted a hearing on October 6. Knutson, respondent, and Hardin were present at the hearing. The Board discovered

that Knutson had spent the $10,000 he had received in March for the sale of his property. The Board also discovered that Knutson had spent all but $1.47 of his monthly pension and social security benefits within three days of their receipt, leaving him without any source of income for nearly a month. The Health Board determined that Knutson's "health condition and the physical condition of his living quarters***indicate that he needs supervision in daily living habits." Following the hearing, respondent and Hardin filed a verified petition for conservatorship. The petition was accompanied by Dr. Love's affidavit.

A hearing was held on respondent's petition on October 11, 1978, in the circuit court of LaSalle County. Respondent, Hardin and Knutson were present at the hearing. Attorney Stephen J. West, who respondent had asked that

morning to serve as guardian ad litem, also was in attendance. At the conclusion of the hearing, Knutson was declared incompetent and Hardin was appointed conservator. Hardin then requested a writ of assistance, which was granted. That evening sheriff's deputies removed Knutson to a nursing home. Hardin testified that he requested a writ of assistance because Knutson threatened to run away.

The next day, the Webers paid respondent $10,000 for legal services and respondent's interest in the property. Respondent amended the land trust to transfer the beneficial interest to the Webers.

On October 16, 1978, Stephen West, Knutson's guardian ad litem, filed a petition to remove the conservator. West testified that prior to the October 11 conservatorship hearing, respondent had

represented to him that Knutson did not own any real property or have any relatives. West said that he also was unaware of respondent's beneficial interest in the land trust before the October 11 hearing. Upon discovering this information, he filed the petition to remove the conservator. Hardin voluntarily resigned as conservator on October 19, and a new conservator was appointed on October 23.- Thereafter, on November 9, West filed a petition to vacate the October 11 order of incompetency. Following a hearing on December 1, the trial court determined that the petition for conservatorship prepared by respondent was "based on misleading allegations and conclusions not substantiated by fact," and vacated the October 11 order of incompetency.

Knutson subsequently filed a petition pursuant to section 41 of the Civil

Practice Act (Ill. Rev. Stat. 1979, ch. 110, par. 41, now Ill. Rev. Stat. 1983, ch. 110, par. 2-611), requesting that costs and attorney fees be assessed against respondent. The trial court determined that allegations contained in the verified petition for conservatorship prepared by respondent were false and made without reasonable cause. It assessed $2,058.75 in fees and costs against respondent. The trial court's fee award was upheld by the appellate court. In re Estate of Knutson (1980), 83 Ill. App. 3d907.

The gravamen of the Administrator's complaint concerns two statements contained in respondent's verified petition requesting that a conservator be appointed for Knutson and a statement contained in the "physician's affidavit," prepared by respondent and signed by Dr. Love. The "physician's affidavit" was

prepared in conjunction with the petition for conservatorship.

At the time respondent prepared the petition for conservatorship, the requirements for such petitions were set forth in section 11-9 of the Probate Act of 1975. (Ill. Rev. Stat. 1977, ch. 110½, par. 11-9.) That section provided:

> "The petition for adjudication of incompetency and appointment of a conservator of the person or of the estate of an alleged incompetent must state, if known: (a) the name and place of residence of the alleged incompetent; (b) the names and post office addresses of the nearest relatives of the alleged incompetent in the following order: (1) the spouse and adult children, if any; if none, (2) the parents and adult brothers and sisters, if any; if none, (3) the nearest adult kindred; (c) the reasons for the conservatorship, (d) the approximate value of the personal estate, (e) the amount of the anticipated gross annual income and other receipts, (f) the name and post office address of the proposed conservator and of any conservator designated by the alleged incompetent pursuant to Section 11-4 and, in the case of an individual, his age and occupation. A petition for the adjudication of incompetency and appointment of a conservator

> may not be dismissed or withdrawn without leave of the court in which it is filed. Ill. Rev. Stat. 1977, ch. 110½, par. 11-9.

The verified petition for conservatorship prepared by respondent stated in part:

> "2. That to the best of the Petitioner's (respondent's) knowledge that (sic) there are no living relatives of the alleged incompetent in the State of Illinois.***
> 4.***to the best of the Petitioner's knowledge the incompetent owns no real estate in LaSalle County or Illinois."

The "physician's affidavit," prepared by respondent and signed by Dr. Love, stated in relevant part:

> "2. On October 2, 1978, I examined EMIL J. KNUTSON."

The Hearing Board determined that respondent was guilty of the charged misconduct, and it recommended that he be suspended from the practice of law for one year. The Review Board concluded that the Hearing Board's findings were not established by clear and con-

vincing evidence as required by our Rule 753(c) (87 Ill. 2d R. 753(c); In re Woldman (1983), 98 Ill. 2d 248, 254; In re Bossov (1975), 60 Ill. 2d 439, 441). It recommended that the complaint be dismissed.

Before we consider the charges of misconduct filed by the Administrator, we address respondent's argument that certain alleged errors below deprived him of a fair hearing.

Respondent first argues that he was denied a fair hearing because the Hearing Board conducted hearings over a seven-week period instead of on a continuous basis in violation of Rule 9.1 of the Rules of the Attorney Registration and Disciplinary Commission. (Ill. Rev. Stat. 1981, ch. 110A, following par. 771.) Rule 9.1 provided:

> "Hearings on complaints shall be continuous from day to day until the taking of evidence is com-

> pleted. Hearings may be held on Saturdays. Ill. Rev. Stat. 1981, ch. 110A, following par. 771.

The record shows that the hearings were held before a panel of the Hearing Board on June 2 and June 3, 1983, and thereafter on June 24 and July 18, 1983. At the close of hearings on June 3, the chairman of the Hearing Board panel suggested that the hearing be continued on agreement of the parties. Respondent's counsel made no objection. Following testimony on June 24, respondent's counsel agreed to a continuance. Because respondent failed to object to the first continuance and did in fact agree to the second continuance, we hold that he has waived this issue. We note that even if respondent had not waived the issue, the failure of the Hearing Board panel to conduct continuous hearings would not deprive this court of the right or power to further consider the charges against

respondent. Technical objections concerning the practice and procedures before the hearing and review boards will not "bind us or limit our authority to act." (In re Mitan (1979(, 75 Ill. 2d 118, 124; In re Czachorski (1969(, 41 Ill. 2d 549, 554.) Moreover, our review of the record convinces us that respondent was not prejudiced by the delay. We therefore reject respondent's first assignment of error.

Respondent next contends that the Hearing Board erred in refusing to admit an exhibit tendered by him. The exhibit was a copy of a judgment order entered by the LaSalle County circuit court in a case entitled Hardin v. Ottawa Publishing Co. 70-L-392, finding that certain statements published by the Ottawa Publishing Company regarding attorney John Hardin were libelous. The statements allegedly concerned Hardin's participa-

tion in Knutson's conservatorship proceeding. When offered at respondent's disciplinary hearing, the exhibit was objected to on the grounds of relevance. We agree with the Administrator that the Hearing Board properly rejected the exhibit. The exhibit concerned a judgment obtained by Hardin, not respondent, and has no bearing on whether respondent engaged in professional misconduct.

Respondent also alleges that members of the Hearing Board represented clients with interests which are adverse to those of respondent in civil matters related to the charges in this proceeding. He thus argues that he was denied a hearing before an impartial tribunal.

Respondent was certainly entitled to a hearing before an impartial tribunal. Whenever a Hearing Board member has an interest, financial or otherwise,

in the subject matter of the proceeding, the member must recuse himself. (In re Heirich (1956), 10 Ill. 2d 357, 384-85). If there was evidence that a member of the Hearing Board panel in this case had an interest which conflicted with respondent's the court would not hesitate to order a new hearing. However, there is no evidence whatsoever establishing that a member of the Hearing Board panel represented a client with interests adverse to those of respondent, or that a member of the panel was personally interested in the outcome of the proceeding. We will not order a new hearing on the basis of mere allegations contained in respondent's brief. Therefore, we reject the contention that respondent was denied a hearing before an impartial tribunal.

Respondent alleges that certain actions of the Administrator constituted

prosecutorial misconduct and thus deprived him of due process. The first allegation of misconduct concerns the Administrator's failure to deliver a copy of the complaint to the chairman of the relevant Inquiry Board panel as required by Rule 4.2 of the Rules of the Attorney Registration and Disciplinary Commission. (Ill. Rev. Stat. 1981, ch. 11A, following par. 771.) Rule 4.2 provided:

> "The complaint shall be prepared by the Administrator. A copy shall be filed by him with the Hearing Board. A copy of the complaint shall concurrently be filed with the Chairman of the Inquiry Panel which voted the complaint. (Ill. Rev. Stat. 1981, ch. 110A, following par. 771.)

Rule 4.2 was promulgated in accordance with Supreme Court Rule 753. (87 Ill. 2d R. 753.) Rule 753(a) provides in part that charges of misconduct are to be investigated and considered by an Inquiry Board. The Inquiry Board may vote to

dismiss a charge, discontinue an investigation undertaken on its own motion, or file a complaint with the Hearing Board. (87 Ill. 2d R. 753(a).) Rule 753 (b) (87 Ill. 2d R. 753(b)) states:

> "A compliant voted by the Inquiry Board shall be prepared by the Administrator and filed with the Hearing Board. The complaint shall reasonably inform the attorney of the acts of misconduct he is alleged to have committed."

The court, in In re Mitan (1979), 75 Ill. 2d 118, examined the purpose of Rules 753(a) and (b). The court stated the following:

> "The purpose of our Rules 753 (a) and (b) is to prevent the Administrator from acting solely on his own in an arbitrary or dictatorial manner. The attorney-respondent is given the protection of having to answer charges only when they have been made by the Inquiry Board after it has considered the facts upon which they are based independently of prosecutorial interests of the Administrator." 75 Ill. 2d 118, 126.

The record in the present case indicates that the Inquiry Board voted to

file a complaint against respondent on March 1, 1980, but stayed the filing of the complaint until a related civil suit involving respondent was completed. The complaint was filed by the Administrator on September 29, 1982. A copy of the complaint was filed with the Hearing Board. Respondent also was served with a copy of the complaint. The record thus shows that the Administrator fully complied with Rules 753(a) and (b) and provided respondent with all the protections required. Respondent argues, however, that Rule 4.2 of the Rules of the Attorney Registration and Disciplinary Commission additionally required a copy of the complaint to be filed with the chairman of the approapriate Inquiry Board panel, and the Administrator's failure to do so constituted prosecutorial misconduct. Respondent's argument is without merit. Rule 4.2 is a

procedural rule of the Commission and does not limit this court's authority to act. (In re Mitan (1979), 75 Ill. 2d 118 124.) At most, the Administrator's conduct amounted to a technical oversight. Since respondent was provided with all the protections required by Rules 753(a) and (b) he was not denied due process.

The second allegation of prosecutorial misconduct concerns a letter from the Administrator to members of the Hearing Board panel, following completion of respondent's hearing. The letter, dated December 29, 1983, reminded panel members that respondent's hearing had been completed on July 18, 1983, and requested that they quickly prepare the Hearing Board's report and recommendation. The letter recited Rule 9.2 of the Rules of the Attorney Registration and Disciplinary Commission (Ill. Rev. Stat. 1981, ch. 110A, following par.

771), which provided for the expeditious preparation of Hearing Board reports and recommendations. The letter is signed by the Administrator. Below the Administrator's signature, in handwritten form, is the following message: "Gentlemen--Please!" The message is followed by the Administrator's initials.

Respondent contends that this ex parte communication with members of the Hearing Board panel, particularly the handwritten message, was improper and constituted prosecutorial misconduct. We disagree. The letter did not address the merits of respondent's case, but only urged members of the Hearing Board panel to comply with Rule 9.2 and quickly prepare the panel's report and recommendation. We find nothing improper with the contents of the letter. Moreover, we do not, unlike respondent, attribute any significance to the phrase,

"Gentlemen--Please!" We interpret it to be nothing more than an additional exhortation to panel members to quickly prepare and file the report. Respondent was in no way prejudiced by the letter.

Next, we address the charges of misconduct. The first statement in the petition for conservatorship which is alleged to be false and misleading concerns the existence of Knutson's relatives. The petition stated: "That to the best of the Petitioner's (respondent's) knowledge that there are no living relatives of the alleged incompetent in the State of Illinois."

The evidence shows that respondent conducted a title search on the Knutson property in March 1978. The title search disclosed that Knutson owned only a fractional interest in the subject property and that the other owners were Knutson's relatives. Respondent testi-

fied that Knutson denied knowing the whereabouts of any relatives. That fact was disputed by Knutson, who testified that he told respondent that he had a niece who lived in Chicago and another who lived in California. Respondent also testified that, by examining records in the township assessor's office, he discovered that Knutson had a niece, named Carol Mitchell, who lived in California. According to respondent, Mitchell refused to give him any information concerning the whereabouts of Knutson's relatives except to say that two relatives--Edward and Mary Knutson--lived near Dixon. Respondent called directory assistance and the Dixon police department in an effort to locate Mary and Edward Knutson, but these efforts were unsuccessful. A second call to Mitchell was made, but again she refused to give respondent any information con-

cerning the whereabouts of Knutson's re relatives.

Mitchell corroborated the fact that respondent had contacted her on several occasions and that she refused to provide him with the addresses of Knutson's relatives. She also testified that respondent specifically inquired as to the whereabouts of several of Knutson's relatives, including Hazel, Mary and Edward Knutson; Lois Burman; and John and Fred Swanson.

The Hearing Board concluded that respondent made a knowing misstatement regarding the existence of Knutson's relatives. Testimony concerning this matter was conflicting. This court has repeatedly stated that the "resolution of conflicting testimony is best resolved by the hearing panel, since it had the advantage of observing the witnesses." (In re Chernoff (1982), 91

Ill. 2d 316, 323. See also In re Schneider (1983), 98 Ill. 2d 215, 221; In re Hopper (1981), 85 Ill. 2d 318, 323.) The Hearing Board's findings are entitled to substantially the same weight as any initial trier of fact. (In re Feldman (1982), 89 Ill. 2d 7, 10.) We have reviewed the record, and find substantial support for the Hearing Board's finding on this issue.

Moreover, we believe that respondent's statement concerning the existnece of relatives was untrue and misleading in another respect. The statute governing conservatorship proceedings required the petition to contain: "(b) the names and post office addresses of the nearest relatives of the alleged incompetent in the following order: (1) the spouse and adult children, if any; if none, (2) the parents and adult brothers and sisters, if any; if none, (3) the nearest adult

kindred***." (Ill. Rev. Stat. 1977, ch. 110½, par. 11-9.) Thus, respondent was required to list, if known, the nearest adult kindred, not just the names of relatives who lived in Illinois. It is undisputed that respondent was aware of the existence of Mitchell, Knutson's niece, at the time he prepared the petition for conservatorship. He was required to list her name and address in the petition.

We also find substantial support in the record for the Hearing Board's finding that the statement "the incompetent owns no real estate in La$alle County or Illinois was false and misleading. It is undisputed that Knutson had a life estate in a protion of the 20-acre tract at the time the conservatorship petition was filed. Respondent prepared the deed reserving Knutson's life interest. Thus, the statement that Knutson "owns

no real estate" was false and misleading. We do not agree with the argument advanced by respondent and adopted by the Review Board that a reasonable person, in preparing the petition, could believe that the term "own" only "contemplates a fee interest." Respondent, as an attorney, was well aware that a life estate constitutes a legal interest in land.

The Hearing Board also determined that a statement contained in the physician's affidavit prepared by respondent and signed by Dr. Terrance W. Love constituted a knowing creation of false evidence. The allegedly false statement was, "On October 2, 1978, I examined E-Mil J. Knutson." After reviewing the record, we agree with the Review Board that the Hearing Board's findings as to this issue are not supported by clear and convincing evidence. Dr. Love tes-

tified that he examined Knutson at the latter's home on October 2, 1978. He testified that his examination consisted solely of history taking, interrogation, and close observation of Knutson and Knutson's living conditions. Based on this examination, Dr. Love testified that it was his opinion that Knutson was "physically and mentally incapable of managing his personal estate and person within the meaning prescribed" by Illinois law. The Administrator argues that the examination performed by Dr. Love was not a "physical" examination, such as the type that would be performed in a physician's office. He thus contends that the claim by Dr. Love that he "examined" Knutson constitutes a knowing falsity. We disagree. Dr. Love's affidavit does not claim that he performed a physical examination as that term is defined by the Administrator. All of the

findings contained in the physician's affidavit could be determined by the type of examination performed by Dr. Love. Moreover, none of the supporting facts in the affidavit are alleged to be untrue. We therefore reject the Hearing Board's finding on this issue as not being supported by clear and convincing evidence.

We are aware of the decision in In re Estate of Knutson (1980), 83 Ill. App. 3d 907, wherein the appellate court affirmed the trial court's assessment of attorney fees against this respondent based in part on a finding that the statement in the physician's affidavit that Dr. Love "examined" Knutson was false. However, the standard of proof in that case was by a preponderance of the evidence. Charges of attorney misconduct must be proved by the higher standard of clear and convincing evi-

dence. (87 Ill. 2d R. 753(c); In re Woldman (1983), 98 Ill. 2d 248, 254.) Moreover, the appellate court found, as do we, that Dr. Love did in fact observe Knutson (In re Estate of Knutson (1980), 83 Ill. App. 3d 907, 910). The appellate court's finding that the affidavit was false was based on its belief that the examination did not qualify as a "medical" examination. We have already rejected that argument as being without merit. The affidavit did not claim or infer that Dr. Love performed a medical or physical examination. The evidence is undisputed that Dr. Love performed an oral and visual examination of Knutson and Knutson's living conditions. As the Review Board correctly observed, the Administrator was free to challenge Dr. Love's credibility and the thoroughness of the doctor's examination, but was obligated to prove by clear and convincing

evidence that the physician's affidavit was false. We find that the allegation that the physician's affidavit was false was not proved by clear and convincing evidence.

In determining the sanction that should be inposed in this case, we take into account the fact that nothing in the law prevented respondent from serving as petitioner in Knutson's conservatorship proceeding. Although respondent had a financial interest in the Knutson property and could have possibly benefited from Knutson's removal from the property, the statute only required a petitioner in such proceedings to be a "reputable citizen of this State." (Ill. Rev. Stat. 1977, ch. 110½, par. 11-4). It did not prohibit interested parties from serving as petitioners. We also find substantial support in the record for the Hearing Board's finding that

Knutson was an "elderly person, of questionable mental competency, and apparently living in extremely substandard conditions***." Furthermore, the statements contained in the petition which were untrue and misleading did not directly concern Knutson's competency. As such, we are of the opinion that respondent's actions fell short of perpetrating a fraud on the court. Therefore, we do not believe that the sanction of disbarment, which was recommended by the Administrator, is warranted.

Nevertheless, we do not think that respondent's conduct comported with accepted professional standards. The untrue allegations in the petition concerning relatives and ownership of property tended to support the allegation of incompetency in that they diverted the trial judge from questioning respondent's credibility and the believability

of respondent's evidence. The record shows that Mitchell was hostile to respondent's attempt to purchase the Knutson property, and certainly would have opposed the appointment of a conservator for her uncle had she been notified of the hearing. Respondent's statement regarding relatives ensured that Mitchell was not notified of the competency hearing prior to its occurrence. The statement regarding Knutson's lack of ownership of real property was not required by the statute. (See Ill. Rev. Stat. 1977, ch. 110½, par. 11-9._ By stating to the court that Knutson owned no real estate, respondent avoided the disclosure of his own adverse property interest. The record shows that respondent never informed the trial court that he had an interest in the property. The record also indicates that Knutson's guardian ad litem, Stephen West, was

never informed prior to the competency hearing that Knutson had a life estate in the property, that Knutson had relatives, or that respondent had a financial interest in the property. We find this to be particularly unacceptable in light of the fact that it was respondent who arranged for West to be the guardian ad litem the day of the hearing. Respondent's lack of candor and truthfulness contributed to deprive an elderly man of his freedom and liberty. The fact that there was some basis for believing that a conservator was necessary for Knutson does not absolve the respondent of his wrongful conduct.

In mitigation, the record reveals that respondent began practicing as an attorney in 1976. He was unfamiliar with the practice and procedures connected with the filing of conservatorship petitions when the events under

consideration here occurred in 1978. Respondent has not previously been subject to disciplinary action. Under the circumstances, we believe that the appropriate sanction is that respondent be suspended for a period of six months.

Respondend suspended.

JUSTICE RYAN took no part in the consideration or decision of this case.

APPENDIX D

Memo Entry, Rehearing denied December 11, 1985.